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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-CV-05640-YGR-TSH

**DECLARATION OF YONATAN EVEN IN
SUPPORT OF EPIC GAMES, INC.'S
OPPOSITION TO APPLE INC.'S MOTION
FOR ENTRY OF JUDGMENT ON ITS
INDEMNIFICATION COUNTERCLAIM**

Judge: Hon. Yvonne Gonzalez Rogers

1 I, Yonatan Even, declare as follows:

2 1. I am a Partner at Cravath, Swaine & Moore LLP, counsel to Epic Games, Inc. (“Epic”)
3 in the above-captioned actions. I am admitted to appear before this Court *pro hac vice*.

4 2. I submit this declaration in support of Plaintiffs’ Opposition to Apple Inc.’s Motion for
5 Entry of Judgment on its Indemnification Counterclaim (the “Motion”).

6 3. I have personal, first-hand knowledge of the facts set forth in this Declaration. If called
7 as a witness, I could and would competently testify to these facts under oath.

8 4. Attached hereto as **Exhibit A** is a true and correct copy of an email exchange between
9 counsel for Apple Inc. (“Apple”) and counsel for Epic, dated between January 18, 2024, and
10 February 6, 2024.

11 5. Attached hereto as **Exhibit B** is a true and correct copy of an email exchange between
12 counsel for Apple and counsel for Epic, dated February 12, 2024, and corresponding attachment to that
13 email exchange.

14 6. Attached hereto as **Exhibit C** is a true and correct copy of a letter written by Jay P.
15 Srinivasan to Yonatan Even dated October 11, 2020. Other than the February 12, 2024 production
16 related to this instant motion (*see supra* ¶ 5), each of Apple’s production letters to Epic after
17 October 11, 2020 was also addressed to the plaintiffs in the two proceedings related to this litigation:
18 (i) *Cameron, et al. v. Apple Inc.*, 19-cv-03074-YGR (N.D. Cal.); and (ii) *Pepper v. Apple Inc. (In re*
19 *Apple iPhone Antitrust Litigation)*, 11-cv-06714-YGR (N.D. Cal.).

20 7. During fact discovery in this litigation, twenty-two (22) depositions of non-Epic fact
21 witnesses were taken. Counsel for plaintiffs in one or both of the *Cameron* and *Pepper* actions
22 participated in the questioning of the following seventeen (17) witnesses:

- 23 i. Craig Federighi (February 10 & 12, 2021)
- 24 ii. Carson Oliver (January 26, 2021; February 1, 2021)
- 25 iii. C.K. Haun (January 13 & 14, 2021)
- 26 iv. Eddy Cue (February 8, 2021)
- 27 v. Eric Friedman (February 1 & 2, 2021)
- 28 vi. Eric Gray (February 12 & 15, 2021)

- vii. Matthew Fischer (December 18, 2020; January 7, 2021)
- viii. Mark Rollins (February 11, 2021)
- ix. Phillip Schiller (February 11 & 15, 2021)
- x. Phillip Shoemaker (January 12 & 14, 2021)
- xi. Ron Okamoto (December 16 & 17, 2020)
- xii. Scott Forstall (March 8, 2021)
- xiii. Shaan Pruden (February 11 & 15, 2021)
- xiv. Tim Cook (February 12, 2021)
- xv. Trystan Kosmynka (February 2 & 3, 2021)
- xvi. Adrian Ong (Match) (February 24, 2021)
- xvii. Aashish Patel (Nvidia) (February 11, 2021)

8. Of the remaining five (5) depositions of non-Epic fact witnesses, three (3) were non-party witnesses for whom Apple issued a joint subpoena across each of the *Epic*, *Cameron* and *Pepper* litigations. These three witnesses were Benjamin Simon (DownDog) (April 23, 2021), Lori Wright (Microsoft) (April 16, 2021) and Shelley Gould (SmartStops) (April 20, 2021).

9. Prior to Apple filing the instant Motion on January 16, 2024, Apple did not meet and confer with Epic regarding the instant Motion or otherwise notify Epic of its intent to file the instant Motion.

10. On January 22, 2024, I participated in a meet and confer between Epic's and Apple's counsel, during which counsel for Apple stated that the instant Motion seeks from Epic all fees and costs Apple incurred in connection with Mr. Cook's deposition, on the basis that Mr. Cook's deposition was noticed in the *Epic* litigation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration on February 16, 2024 in New York, New York.

Yonatan Even